

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

JAIME DEMELLO individually, and as the
Personal Representative to the Estate of
ALEXANDER DEMELLO, and MICHAEL
H. DEMELLO individually, and A.D. and
O.D., minor children,

Plaintiffs,

v.

UNITED STATES OF AMERICA;
ADONIS BROWN, and UNKNOWN JOHN
DOES AND JOHN DOE CORPORATIONS,

Defendants.

CAUSE NO.

COMPLAINT FOR
WRONGFUL DEATH

I. PARTIES

1.1 Jaime Demello is the natural mother of and Personal Representative of the Estate of Alexander Demello. Michael H. Demello is the natural father of Alexander Demello, whose death gives rise to this tort claim. Jaime Demello and Michael Demello are the natural parents of A.D. and O.D. minor children. At all times material hereto, Plaintiffs resided in Pierce County, Washington.

1.2 The United States of America is named on the basis of the determination pursuant to Federal Tort Claims Act, 28 U.S.C. Sec. 1346(b), because the alleged negligence and injuries therefrom occurred on the grounds of a federal military installation owned and maintained by the United States of America. Additionally, the United States is named on the basis of the determination pursuant to 28 U.S.C. Sec 2671 that the United State Army, and its employees and agents are employees and agents of the United States Government.

1.3 Adonis Brown is named as a tortfeasor for the negligent handling of a firearm causing the death of a minor child. This Court has jurisdiction over this claim under Supplemental Jurisdiction as it arises out of the same circumstances and controversy 28 U.S.C. Sec 1367(a).

1.4 Plaintiffs allege that there may be other persons or entities whose negligence contributed to the death of Plaintiffs' child, but whose identity is not known and who are referred to herein as Unknown John Does. Plaintiffs request these pleadings be amended to reflect the true identities of these Defendants if and when they are identified.

1.5 Plaintiffs allege there may be other Corporations or Partnerships that employed individuals mentioned in the paragraphs above, such as to make these John Doe Corporations or Partnerships responsible, whose negligence contributed to the death of Plaintiffs' child, but whose identity is not now known and who are referred to herein as Unknown John Doe Corporations or Partnerships. Plaintiffs request these pleadings be amended to reflect the true identities of these Defendants if and when they are identified.

II. JURISDICTION AND VENUE

2.1 On June 8, 2016, the Personal Representative for the Estate of Alexander

Demello and Plaintiff Jaime Demello on behalf of herself, the estate, and claims for minors A.D. and O.D. submitted Claims for Damage, Injury, or Death Tort Claim form on all appropriate agencies (*See Exhibit 1, attached*). The Department of the Army Office Joint Base Lewis-McChord, WA received the claim form on June 9, 2016. On July 22, 2016 Plaintiff received a letter from Ellen Jennings denying the Federal Tort Claim.

2.2. On December 14, 2015, Michael Demello submitted a Claim for Damage, Injury, or Death Tort Claim form on all appropriate agencies (*See Exhibit 2, attached*). The Department of the Army Office Joint-Base Lewis-McChord, WA received the claim form on December 14, 2016. On March 9, 2016, Plaintiff received a letter from Ellen Jennings of the Department of the Army denying the Federal Tort Claim.

2.3 This Court has jurisdiction over claims against the United States of America under 28 U.S.C. 2675(a).

2.4 The incident that gave rise to the tort claim occurred on Joint Base Lewis-McChord located in Pierce County, Washington. Plaintiffs reside in Pierce County. Venue is therefore proper under 28 U.S.C. Sec. 1402(b).

III. STATEMENT OF CLAIMS

Claims Against the United States and Adonis Brown

3.1 Beginning in approximately 2007 and continuing until just after October 20, 2015, there was a 6-foot by 3-foot hole in the fence at the end of Woodbrook Drive SW just beyond 150th St SW, in Lakewood, WA. The compromised fence was the perimeter fence for Fort Lewis, part of the Federal Government's Joint Base Lewis-McChord. The United States Army is responsible for maintaining this fence and controlling the perimeter of the

1 base. The Woodbrook neighborhood is located on the civilian side of the Joint Base Lewis-
2 McChord perimeter fence.

3 3.2 Residents from the Woodbrook neighborhood attest that the hole in the fence
4 onto the base has been there over at least 9 years. There was a trail located on the Fort Lewis
5 side of the fence that the neighbors would use as a dog walking trail and the children would
6 use the area as a park, but it was also the scene of criminal activity.
7

8 3.3 As of October 20, 2015, there were no signs along the fence indicating that
9 the property was a Federal Base.

10 3.4 Brothers and also minor children, A.D. (15 years old) and decedent
11 Alexander Demello (13 years old) at the time of the incident, had recently moved to the
12 Woodbrook neighborhood. The children had no knowledge that the wooded property
13 adjacent to their neighborhood belonged to Joint Base Lewis-McChord or that it was
14 Government Property.
15

16 3.5 A.D. and Alexander Demello were friends with a long-time resident of the
17 Woodbrook neighborhood, Defendant Adonis Brown (17) who had frequently entered the
18 Joint Base Lewis-McChord property through the complained of hole in the fence to a trail
19 that was used by many of Woodbrook neighborhood's citizens.
20

21 3.6 On October 20, 2015, at approximately 2:00 pm, Alexander Demello and
22 A.D. followed Adonis Brown onto the Joint Base Lewis-McChord property. Adonis Brown
23 was walking alongside the two boys when he slowed his pace and lingered behind the two
24 brothers.

25 3.7 Adonis Brown found a gun under some brush along the trail on Joint Base
26 Lewis-McChord. (As told to police during interviews after the incident). A.D. turned around

1 to see what Adonis Brown was doing and an accidental gunshot rang out from the gun held
2 by Adonis Brown and struck Alexander Demello in the face just below his right eye.

3 3.8 Adonis Brown, believing he had a warrant, fled the scene after dialing 911
4 and handing his phone to Alexander Demello's brother, A.D. Alexander Demello was still
5 able to talk after being shot, exclaiming to his brother, "Go get Mom!". His brother ran to
6 get help after comforting him.

7
8 3.9 West Pierce Fire Department EMS responded and transported Alexander
9 Demello to Mary Bridge Children's Hospital in Tacoma, WA.

10 3.10 On October 25, 2015 Alexander Demello succumbed to his injuries and died.

11 3.11 On October 7, 2013, two years prior to the incident, Lakewood police
12 received a report that a burglary had been committed and the suspect fled through the hole
13 in the fence located at the intersection at issue in this lawsuit. The United States knew or
14 should have known that there was criminal activity occurring on their property.

15
16 3.12 The United States knew that the hole in the fence located at Woodbrook Dr.
17 SW and 150th St. SW was an entry point for civilians onto Joint Base Lewis-McChord as
18 evidenced by the worn walking trail documented in the complaints to the Security Specialist
19 of Joint Base Lewis - McChord. The United States knew this wooded area was adjacent to
20 the Woodbrook neighborhood, and should have known based on prior criminal activity that
21 this location was being used for crime.

22
23 3.13 The United States knew there was a hole in the fence along with significant
24 foot traffic as reported to the Security Specialist of Joint Base Lewis-McChord on May 18,
25 2011, indicating that it was a safety risk and security issue and that the hole in the fence
26

needed to be repaired “ASAP”. Additionally, it was suggested they add more foot patrols to that area of perimeter fence.

3.14 The United States owed a duty to Alexander Demello to properly fence and maintain a perimeter around an inherently dangerous military base. The United States owed a duty to take precautions against criminal activity knowingly occurring at that specific location of the perimeter fence breach. Their intentional failure to act created a temptation and opportunity for criminal misconduct.

3.15 The United States breached that duty when it allowed the hole in fence to remain encouraging constant civilian traffic to continue to utilize that portion of the base and did not mend the fence. The United States breached its duty when it knew criminal activity was taking place at the location of the hole in the fence and did not take precautions to prevent injury or death to Alexander Demello.

3.16 Adonis Brown negligently handled the firearm resulting in the accidental shooting of Alexander Demello.

IV. LEGAL THEORIES

4.1 Common Law Negligence

4.2 Premises Liability

4.3 Wrongful Death

4.4 Negligent Infliction of Emotional Distress

4.5 Negligent Handling of a Firearm

V. PROXIMATE CAUSE

5.1 The conduct of the Defendants was the proximate cause of the injuries and damages outlined below.

VI. DAMAGES AND INJURIES

6.1 The acts and omissions of Defendants directly and proximately caused plaintiff to suffer death following severe and permanent injury, both mental and physical, pain and suffering, mental anguish, premature death, and other elements of damages as allowed by law.

6.2 Plaintiffs seek damages including compensation for medical, hospital, medication, and burial expenses; loss of services and support; loss of love and companionship; and injury to, and destruction of, the parent-child relationship, as a result of the death of their child, which was proximately caused by the Defendants in an amount to be proven at trial.

6.3 Plaintiffs seek damages for loss of consortium for both brother A.D. and sister O.D.

6.4 Plaintiff A.D. seeks damages for the Negligent Infliction of Emotional Distress from witnessing the death of his brother Alexander Demello.


WHEREFORE, Plaintiffs, by and through undersigned counsel, request that this Court reverse rulings by the Judge Advocate General's Office of the United States Army finding against liability for negligence by the United States Government and enter a judgment against the Defendant for all injuries and damages suffered by the plaintiffs, in amounts to be proven in trial, together with their reasonable costs and fees occurred herein, and further relief as justice requires.

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1 DATED this 26th day of August, 2016.

2 HOLMAN LAW, PLLC

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4 Jessica Holman Duthie, WSBA No. 43065
5 Attorney for the Estate of Alexander Demello

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7 LAW OFFICE OF FLOYD CHAPMAN, PLLC

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9 Floyd R. Chapman WSBA No. 49357
10 Attorney for Jaime & Michael Demello